

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

KEVIN POWELL,	:	
	:	
Plaintiff,	:	No. 4: CV-07-02225
	:	
v.	:	(Judge McClure)
	:	
DR. JOHN SYMONS,	:	(Magistrate Judge Smyser)
	:	
	:	
Defendant.	:	

ORDER

April 12, 2010

BACKGROUND:

On December 7, 2007, pro se plaintiff Kevin Powell, currently an inmate at the Medical Center for Federal Prisoners in Springfield, Missouri, filed a civil rights action under 42 U.S.C. § 1983. (Rec. Doc. No. 1). The single defendant in the action, Dr. John Symons, filed an answer to Powell's complaint on September 26, 2008. (Rec. Doc. No. 54). The basis for Powell's complaint arises from the time while he was incarcerated at the State Correctional Institution at Rockview ("SCI-Rockview"). In his complaint, Powell alleges that defendant Symons "repeatedly ignored the plaintiff's complaints concerning burning feelings in his chest, stomach, liver;kidney [sic] areas, and back for quite some time." Id. at 2. Powell claims that Dr. Symons has been deliberately indifferent to Powell's

medical needs and that Powell “has sustained further injury as a result of the defendant’s ‘treatment’.” Id.

PROCEDURAL HISTORY:

The instant matter initially was referred to Magistrate Judge J. Andrew Smyser. On March 6, 2008, defendant Symons filed a motion to dismiss Powell’s complaint and a brief in support. (Rec. Doc. Nos. 15 and 16). After being granted an extension of time in which to file a brief in opposition (Rec. Doc. No. 30), Powell filed a brief opposing the defendant’s motion to dismiss on July 30, 2008. (Rec. Doc. No. 42). On September 18, 2008, Magistrate Judge Smyser issued a report and recommendation in which he recommended the denial of the defendant’s motion to dismiss. (Rec. Doc. No. 53). This court adopted the magistrate judge’s report and recommendation and remanded the case to the magistrate judge for further proceedings on October 27, 2008. (Rec. Doc. No. 57).

On December 15, 2008, defendant Symons filed a motion for summary judgment, a brief in support, and a statement of material facts. (Rec. Doc. Nos. 64, 65, and 66). Thereafter, plaintiff requested and received extensions on six occasions of time in which to file an opposing brief to the defendant’s motion for summary judgment. (Rec. Doc. Nos. 76, 79, 89, 106, 117, and 123). By order dated December 7, 2009, Powell was required to file a brief in opposition by

February 26, 2010. (Rec. Doc. No. 123). The magistrate judge denied a subsequent request for an extension of time on February 24, 2010, citing the numerous instances in which an extension was granted and the fact that Powell was informed that no further extensions would be afforded. (Rec. Doc. No. 142). Powell has failed to file a brief opposing the defendant's motion for summary judgment.

On March 22, 2010, Magistrate Judge Smyser issued an eleven (11) page report and recommendation in which he recommended that defendant Symons' motion for summary judgment (Rec. Doc. No. 64) be granted. (Rec. Doc. No. 148). Powell has not filed any objections to the magistrate judge's report and recommendation, and the time for doing so has since passed. Because Powell has elected not to object to the report and recommendation and because we agree with Magistrate Judge Smyser's thorough analysis and recommendation, we will adopt the report and recommendation in full. Therefore, we will grant the defendant Symons' motion for summary judgment (Rec. Doc. No. 64), enter judgment in favor of defendant Symons, and direct the clerk to close the file.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. United States Magistrate Judge Smyser's Report and

Recommendation is **ADOPTED IN FULL**. (Rec. Doc. No. 148).

2. Defendant's Motion for Summary Judgment is **GRANTED**. (Rec. Doc. No. 64).
3. Final judgment is entered in favor of defendant Symons and against plaintiff.
4. The clerk is directed to close the case file.

s/ James F. McClure, Jr.
James F. McClure, Jr.
United States District Judge